ORDEN RECEIVED FOR FILING

IN RE: PETITIONS FOR SPECIAL EXCEPTION \*

AND VARIANCE - SE/Corner Pulaski

Highway and Allender Road

(11445 Pulaski Highway)
11th Election District

5th Councilmanic District

Jerry Thurston Petitioner BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 97-472-SPXA

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Exception and Variance for that property known as 11445 Pulaski Highway, located at its intersection with Allender Road in White Marsh. The Petitions were filed by the owner of the property, Jerry Thurston, through his attorney, Gerald C. Ruter, Esquire. The Petitioner requests a special exception for an arcade and restaurant on the subject property, and variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 238.2 to permit a side and rear setback of 3.1' in lieu of the required 30 feet each, and from Section 409.6.A.2 to permit 159 parking spaces in lieu of the required 238 spaces for a proposed restaurant expansion. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Jerry Thurston, legal owner of the property, Steve Annis, Architect, and John W. Nowicki, Esquire, who represented the Petitioner on behalf of Mr. Ruter. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a triangular shaped parcel, located on the southeast corner of Pulaski

Highway at its intersection with Allender Road. The property consists of 1.812 acres, more or less, zoned B.R., and is improved with a restaurant, formerly known as The Brass Horse. The zoning history of this property demonstrates that same was the subject of prior Case No. 91-249-A in which the then Deputy Zoning Commissioner Ann M. Nastarowicz, granted variance relief for a proposed addition to the restaurant on May 22, 1991. At that time, the Petitioner proposed to significantly expand the existing restaurant, and a retail and balcony seating area were contemplated. Although relief was granted, subject to certain terms and restrictions, the Petitioner apparently revised his plans for the subject site before any construction was undertaken. Subsequently, the Petitioner came before Zoning Commissioner Lawrence E. Schmidt in Case No. 92-308-A, seeking variance relief to permit an expansion of the existing kitchen and presented a modified site plan which eliminated the retail and balcony seating areas previously proposed. By Order dated March 30, 1992, Commissioner Schmidt The Petitioner now comes before me granted the Petitioner's request. seeking special exception and variance relief to redevelop the entire site, incorporating an arcade use with the expanded restaurant. proposed arcade will consist of a number of video and virtual reality games and will cater to families. The site plan submitted shows that the Petitioner has acquired additional land to the rear of his property and will be able to provide more parking than in the past; however, the same side and rear setback of 3.1 feet will be maintained, and while additional parking will be provided, the Petitioner still lacks the number required Testimony revealed that the Petitioner for the proposed expansions. recently commenced making extensive renovations to the existing building and changed the name of the business to Attitudes 3000. All renovations

to the subject site have been completed and the Petitioner hopes to open by the end of June, 1997. Due to the proposed addition of an arcade to the restaurant use, a special exception is necessary. In addition, the requested variances are necessary to legitimize existing conditions on the property, due to the recent improvements.

Further testimony revealed that the Petitioner has submitted a landscape plan to Baltimore County, which has been reviewed and approved by the County's Landscape Architect. A copy of said plan shows that extensive landscaping is proposed for the site.

It is clear that the B.C.Z.R. permits the use proposed in a B.R. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. In fact, no one appeared in opposition to the request, and there were no adverse comments submitted by any Baltimore County reviewing agency. Thus, the facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety. or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented,

I am persuaded to grant the variances. As noted above, the same side/rear
setbacks of the original building will be maintained, and while the Petitioner cannot meet parking requirements for the proposed improvements, it
is apparent that parking has never been a problem at this site as evidenced

by the prior parking variances granted to this Petitioner. And, as stated earlier, the Petitioner has acquired additional land to the rear of his property and is able to provide 45 more parking spaces than in the past. In my view, that strict compliance with the zoning regulations would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special exception and variances should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13 day of June, 1997 that the Petition for Special Exception to permit an arcade and restaurant on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 238.2 to permit a side and rear setback of 3.1' in lieu of the required 30 feet each, and from Section 409.6.A.2 to permit 159 parking spaces in lieu of the required 238 spaces for a proposed restaurant expansion, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- 2) Landscaping for the subject property shall be completed within six (6) months of the date of this

Order. All landscaping of the subject site must be in compliance with the landscape plan approved by the Landscape Architect for Baltimore County.

3) When applying for any permits, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs



# Baltimore County Zoning Commissioner Office of Planning and Zoning

Suite 112, Courthouse 400 Washington Avenue Towson, Maryland 21204 (410) 887-4386

June 13, 1997

John W. Nowicki, Esquire 5916 North Point Road Baltimore, Maryland 21219

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE SE/Corner Pulaski Highway and Allender Road

(11445 Pulaski Highway)

11th Election District - 5th Councilmanic District

Jerry Thurston - Petitioner

Case No. 97-472-SPXA

Dear Mr. Nowicki:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Exception and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

cc: Mr. Jerry Thurston 11445 Pulaski Highway, White Marsh, Md. 21162

Mr. Steve Annis, Innovative Design Group 720 S. Montford Avenue, Baltimore, Md. 21224

People's Counsel; Case Viles

RE: PETITION FOR SPECIAL EXCEPTION \* BEFORE THE
PETITION FOR VARIANCE

11445 Pulaski Hwy (Brass Horse Restaurant)\* ZONING COMMISSIONER
Corner S/S Pulaski Hwy, W/S Allender Rd
11th Election District, 5th Councilmanic \* OF BALTIMORE COUNTY

Jerry Thurston \* CASE NO. 97-472-XA
Petitioner

#### ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the abovecaptioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel Room 47, Courthouse 400 Washington Avenue

Towson, MD 21204 (410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of May, 1997, a copy of the foregoing Entry of Appearance was mailed to Gerald C. Ruter, Esq., 3201 E. Joppa Road, Baltimore, MD 21234, attorney for Petitioner.

Peter May Zimmeman
PETER MAX ZIMMERMAN



<u>Baltimore,</u>

21234

# Petition for Special Exception

## to the Zoning Commissioner of Baltimore County

for the property located at

which is presently zoned

OFFICE USE ONLY

unavailable for Hearing

OTHER

**Next Two Months** 

23/47

ESTIMATED LENGTH OF HEARING

the following date

REVIEWED BY:

This Petition shall be filed with the Office of Zoning Administration & Development Management,

Property is to be posted and advertised as prescribed by Zoning Regulations.

Zipcode

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and

Areadé & ROSAURANT.

are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition Contract Purchaser/Lessee: (Type or Print Name) Signature Address (Type or Print Name) City Attorney for Petitioner: Gerald C. Ruter 3201 E. Joppa Road 410 665-9500

PHONE NO. : 410 558 139

Apr. 16 1997 12:19PM P1

# 472



# etition for Variance

## to the Zoning Commissioner of Baltimore County

for the property located at

11445 PULASKI

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

238.2 to permit a 3.1 side and rear setback in hem of 30's 409.6 A.Z. to permit 159 parking spaces in lieu of 238.

of the Zoning Regulations of Beltimore County, to the Zoning Law of Beltimore County; for the following reasons: (indicate hardship or practical difficulty)

to be determined at hearing

Property is to be posted and advertised as prescribed by Zoning Regulations.

f, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filling of this patition, and further agree to and are to he bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

	I/We do solemnly declare and affirm, under the panelties of perjury, that they are the legal owner(s) of the property which is the subject of this Petition.
Contract Pushhabaquespee:	Logal Ownerld:
(Type or Print Nesse)	Jerry Whurston (Type or Print Name)
SignAture	Signature for Attack
Additions	(Type or Print Name)
Cay State Zipcode	Signaturo
Altumey for Patitioner:	1000 - 1 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -
GERALD C. RUTER	11445 Pulaski Highway 344-6782
S. OC R.	White Marsh, MD 21162
Signature	City State Name, Address and phone minibar of representative: to be contacted.
3201 E. Joppa Road (410)665-9500	Innovative Design Group, Inc.
Baltimore, MD 21234	720 S. Montford Avenue 21227
City State Zipcode	Address Phone No. 563-8119
a	OFFICE USE ONLY
	EBTIMATED LENGTH OF HEATING Unerallable for Heating
	the following dates Hant Tun Stantus

CHOEN MECENNED

#### Zoning Description

Beginning at a point on the southeast side of Pulaski Highway which is 75 feet wide at the centerline of Allender Road, which is 20 feet wide in right of way. Thence the following courses and distances:

Typical metes and bounds: N  $31^{\circ}43'40''W$  45.0'; N8°31'00''E 475.0'; S49°39'40''E 328.4'; S45°20'20''W 186.4'; and S15°20'25''W 163.6' to the place of beginning as recorded in Deed Liber 7897/347; 8519/502.

Property Address: Brass Horse Restaurant 11445 Pulaski Highway White Marsh, MD 21162

# DINNINA TO MOLLON

Jerry Thuriston
Special Exception: for afSpecial Exception: for afSpecial Exception: for afSpecial Annual Veriands for permit 3.1 flow of 30
fleet and to permit 159 parking
spaces in jour of 238
Hearing Mondey, Jurie 2,
1997 at 2:00 p.m., 4th floor
fleeting room Counts Bidg.,
401-Bosley Avenue.

LAW/RENCE E. SCHMIDT Zorling Contumissioner for Bullimote County NOTES! (1) Hearings are Handloapped: Accessible; for Special Call (410) 887-3353. (2) For information concerning the File anti/or Hearing. Please Call (410) 887-3391.

5/286 May 15 0143713

CERTIFICATE OF PUBLICATION

row:
SON,
MD.
TOWSON, MD.,
4
5
, 195

published in THE JEFFERSONIAN, a weekly newspaper published weeks, the first publication appearing on \_ in Towson, Baltimore County, Md., once in each of \_\_\_\_successive THIS IS TO CERTIFY, that the annexed advertisement was

THE JEFFERSONIAN,

				 CHRC \$555,00	CASHIER'S VALIDATION
BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT	DATE 4/23/97 Loten, 472  ACCOUNT 01-615	By: myk AMOUNT \$ 550 a of	FROM: 520. Comm Var. #3500 ct.	DISTRIBUTION WHITE- CASHIER PINK - AGENCY YELLOW - CUSTOMER  US 1002106P104 23-97	and the state of t

#### CERTIFICATE OF POSTING

#### RE: Case # 97-472-XA

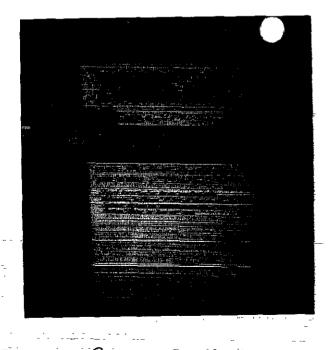
Petitioner/Developer: (Jerry Thurston) Date of Hearing/Closing: (June 2, 1997)

Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, Maryland 21284

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law			
were posted conspicuously on the property located at			
11445 Pulaski Highway Baltimore, !	Waryland 21162		
The sign(s) were posted on	May 16, 1997 (Month, Day, Year)		



Sincerely,

(Signature of Sign Poster & Date)

Thomas P. Ogie, Sr. (Printed Name)

325 Nicholson Road (Address)

Baltimore, Maryland 21221

(410) 687-8485

(Telephone Number)

47-472-XA

# 472

Request for Zoning: Va	ariance, Special Exception, or Special Hearing	
Date to be Posted: Any	time before but no later than	
Format for Sign Printin	ng, Black Letters on White Background:	
	ZONING NOTICE	
	Case No.:	
	A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD	
PLACE:		
DATE AND TIME:		
REQUEST: Spec.	I Exception for an arcide and a	

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM HEARING CALL 887-3391.

and to permit 159 parking spaces in him of 238

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE



111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

## ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

#### PAYMENT WILL BE HADE AS FOLLOWS:

- Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:
Item No.: . 472
Petitioner: Jerry Thurston (Brass Horse Restaurt)
Inocation: 11445 Pulaski Highur
PLEASE FORWARD ADVERTISING BILL TO:
NAME: Verg Thurston
ADDRESS: 11445 Pelaski Highing
Whik Morsh, MD 21162
PHONE NUMBER: (416) 344-0782
3

(43)

(Revised 04/09/93)

TO: PUTUXENT PUBLISHING COMPANY
May 15, 1997 Issue - Jeffersonian

Please foward billing to:

Gerald C. Ruter, Esq. 3201 E. Joppa Road Baltimore, MD 21234 410-665-9500

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in <u>Towson</u>, <u>Maryland</u> on the property identified herein as follows:

CASE NUMBER: 97-472-XA

11445 Pulaski Highway - Brass Horse Restaurant corner S/S Pulaski Highway, W/S Allender Road 11th Election District - 5th Councilmanic

Legal Owner(s): Jerry Thurston

Special Exception for arcade and restaurant.

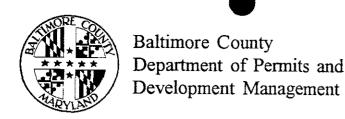
Variance to permit a 3.1 foot side and rear setback in lieu of 30 feet and to permit 159 parking spaces in lieu of 238.

HEARING: MONDAY, JUNE 2, 1997 at 2:00 p.m., 4th floor hearing room Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

May 9, 1997

#### NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in <u>Towson</u>, <u>Maryland</u> on the property identified herein as follows:

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11445 Pulaski Highway - Brass Horse Restaurant corner S/S Pulaski Highway, W/S Allender Road 11th Election District - 5th Councilmanic Legal Owner(s): Jerry Thurston

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Variance to permit a 3.1 foot side and rear setback in lieu of 30 feet and to permit 159 parking spaces in lieu of 238.

HEARING: MONDAY, JUNE 2, 1997 at 2:00 p.m., 4th floor hearing room Courts Bldg., 401 Bosley Avenue.

Arnold Jablon

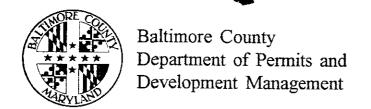
Director

cc: Jerry Thurston

Innovative Design Group Gerald C. Ruter, Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MAY 18, 1997.

- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
- (3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.



Development Processing County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

May 30, 1997

Gerald C. Ruter, Esquire 3201 E. Joppa Road Baltimore, MD 21234

RE: Item No.: 472

Case No.: 97-472-XA

Petitioner: Jerry Thurston

Dear Mr. Ruter:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans which was accepted for submitted with the above referenced petition, processing by Permits and Development Management (PDM), Zoning Review, on April 23, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

and Richards yo

W. Carl Richards, Jr.

Zoning Supervisor

WCR/re Attachment(s) BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Date: May 14, 1997

Department of Permits & Development

Management

FROM:

Robert W. Bowling, Chief

Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting

for May 14, 1997 Item No. 472

The Development Plans Review Division has reviewed the subject zoning item. See our previous comments for this site under C.R.G. Waiver #W-91-119, Brass Horse Restaurant, dated August 4, 1992.

The previously approved Landscape Plan may be subject to new conditions from the current request.

RWB:HJO:jrb

cc: File

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: May 14, 1997

FROM: Arnold F. "Pat" Keller, III, Director

Office of Planning

SUBJECT: 11445 Pulaski Highway

**INFORMATION** 

Item Number:

472

Petitioner:

Thurston Property

Zoning:

BR

Requested Action:

Special Exception & Variance

Summary of Recommendations:

The subject property is located just opposite of an attractive, newly constructed commercial center. The center greatly enhances this portion of Pulaski Highway. While the Planning Office does not oppose the requested special exception and accompanying variance, we recommend that a condition be placed in the Order requiring the applicant to submit elevation drawings of the addition for review and approval by this office prior to issuance of any building permits. In addition, it is recommended that the applicant be required to file a landscape plan with the Baltimore County Landscape Architect.

by W. Long my L. Kens

Prepared by:

Division Chief:

AFK/JL

#### Baltimore County Government Fire Department



700 East Joppa Road Suite 901 Towson, MD 21286-5500

(410) 887-4500

May 8, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson. MD 21204
MAIL STOP-1105

RE: Property Owner: The Painters Mill Venture. Inc.

Jerry Thurston

Mancr Health Care Corporation

Baltimore Count, Lodge 34 of Fraternal

Order of Police, Inc.

Location: DISTRIBUTION MEETING OF May 5. 1997

Item No.: 462, (4721) 451. 485, Zoning Agenda:

Gentlemen:

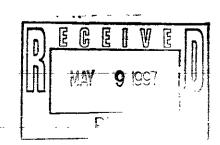
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

- The site shall be made to domply with all applicable parts of the fire Prevention Sode bride to occupancy or beginning of operation.
- 5. The buildings are atructures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code". 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office. PHONE 887-4681, MS-1102F

cc: File







David L. Winstead Secretary Parker F. Williams Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 5.6.97

Item No. 472 MJK

Dear Ms. Eubanks:

We have reviewed the referenced item and we have no objection to approval, as a field inspection reveals the existing entrance(s) onto MD/US are acceptable to the State Highway Administration (SHA) and this development is not affected by any SHA projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions. Thank you for the opportunity to review this item.

Very truly yours,

f. f. thelle for Ronald Burns, Chief

**Engineering Access Permits** 

Division

LG

#### DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

#### INTER-OFFICE CORRESPONDENCE

TO:

PDM

FROM:

R. Bruce Seeley & DS /GP Permits and Development/Review

SUBJECT: Zoning Advisory Committee\_

Meeting Date:

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

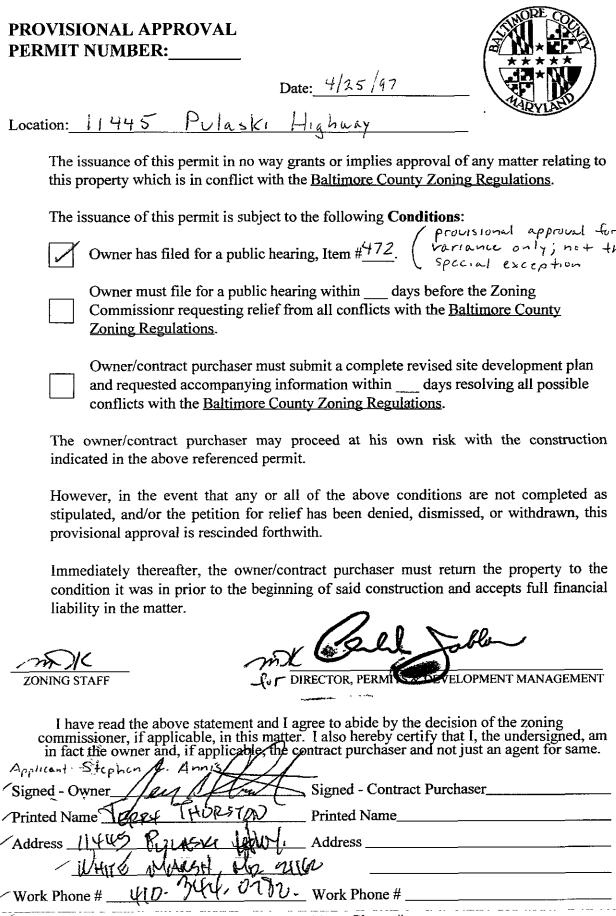
RBS:sp

BRUCE2/DEPRM/TXTSBP

#### **Baltimore County Government** Permits and Development Management 111 West Chesapeake Avenue, Room 111 Towson, MD 21204 (410) 887-3391



Home Phone # \_\_



Home Phone # \_

Revised 8/11/95

APPLICATION FOR PERMIT  ALTEMORE COUNTY MARYLAND  DATE: 4(197)	)
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGE-ENT	
TOTAL THE PART OF	LDG,
RMIT #: PROPERTY ADDRESS 11445 PULASEL HUY YES NO	
CEIPT #: SUITE/SPACE/FLOOR DO NOT KNOW SUBDIV:	
EF #: TAX ACCOUNT #: \\U105 \\ \\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	
OWNER'S INFORMATION (LAST FIRST)	
DE: NAME: July July July July July July July July	
ID BY:	
SPECTOR: VEC. NO.	k/
KNOW THE SAME IS CORRECT AND TRUE, COMPANY: TO DOWN THE SAME IS CORRECT AND TRUE,	
O THAT IN DOING THIS WORK ALL PROVI- ONS OF THE BALTIMORE COUNTY CODE AND OTHER BALTIMORE COUNTY CODE AND OTHER BALTIMORE COUNTY CODE AND	' '
ROPRIATE STATE REGULATIONS WILL BE DUONE #1.	
NOT AND WILL REQUEST ALL REQUIRED APPLICANT	
SPECTIONS.  SIGNATURE: Y' WW TRACT: BLOCK:  ILDING 1 or 2 FAM. PLANS: CONST PLOT PLAT DATA EL PL	
CODE CODE 1947 BOCA. TENANT GYTAN.	•
BOCA CODE CONTR: CYPTUS	•
PE OF IMPROVEMENT ENGNR:  NEW BLDG CONST SELLR:	-
X ADDITION	•
ALTERATION	
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OTHER KITCHEN, DINING & AGGIVE WT. ALT. TO INCL. TAKE	
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Attention:

Joe Burns

These are the Special except in is variance papers Jerry was to FAX to you.

Thanks Jun

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Mon: JoeB.

97-4111.SPX

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse 400 Washington Avenue Towson, Maryland 21204 (410) 887-4386

June 13, 1997

John W. Nowicki, Esquire 6916 North Point Road Baltimore, Maryland 21219

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE
SE/Corner Pulaski Highway and Allender Road
(11445 Pulaski Highway)
11th Election District - 5th Councilmanic District
Jerry Thurston - Petitioner
Case No. 97-472-SPXA

Dear Mr. Nowicki:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Exception and Variance have been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs/

c: Ar. Jerry Thurston 11445 Pulaski Highway, White Marsh, Md. 21162

Mr. Steve Annis, Innovative Design Group 720 S. Montford Avenue, Baltimore, Md. 21224

People's Counsel; Case Files

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ERITITIONS IN IN RE:

SE/Corner Pulaski AND VARIANCE Highway and Allender Road (11445 Pulaski Highway) 11th Election District 5th Councilmanic District

Jerry Thurston Petitioner

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

09/10/97 <u>22</u>:26

Case No. 97-472-SPXA

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Exception and Variance for that property known as 11445 Pulaski Highway, located at its intersection with Allend-The Petitions were filed by the owner of the er Road in White Marsh. property, Jerry Thurston, through his attorney, Gerald C. Ruter, Esquire. The Petitioner requests a special exception for an arcade and restaurant on the subject property, and variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 238.2 to permit a side and rear setback of 3.1' in lieu of the required 30 feet each, and from Section 409.6.A.2 to permit 159 parking spaces in lieu of the required 238 spaces for a proposed restaurant expansion. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Jerry Thurston, legal owner of the property, Steve Annis, Architect, and John W. Nowicki, Esquire, who represented the Petitioner on behalf of Mr. Ruter. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a triangular shaped parcel, located on the southeast corner of Pulaski 1.812 acres, more of tess, zoned B.R., and is improve with a restaurant, formerly known as The Brass Horse. The zoning history of this property demonstrates that same was the subject of prior Case No. 91-249-A in which the then Deputy Zoning Commissioner Ann M. Nastarowicz, granted variance relief for a proposed addition to the restaurant on May 22, 1991. At that time, the Petitioner proposed to significantly expand the existing restaurant, and a retail and balcony seating area were contemplated. Although relief was granted, subject to certain terms and restrictions, the Petitioner apparently revised his plans for the subject site before any construction was undertaken. Subsequently, the Petitioner came before Zoning Commissioner Lawrence E. Schmidt in Case No. 92-308-A, seeking variance relief to permit an expansion of the existing kitchen and presented a modified site plan which eliminated the retail and balcony seating areas previously proposed. By Order dated March 30, 1992, Commissioner Schmidt

seeking special exception and variance relief to redevelop the entire site, incorporating an arcade use with the expanded restaurant. The proposed arcade will consist of a number of video and virtual reality games and will cater to families. The site plan submitted shows that the Petitioner has acquired additional land to the rear of his property and will be able to provide more parking than in the past; however, the same side and rear setback of 3.1 feet will be maintained, and while additional parking will be provided, the Petitioner still lacks the number required for the proposed expansions. Testimony revealed that the Petitioner recently commenced making extensive renovations to the existing building and changed the name of the business to Attitudes 3000. All renovations

the subject site have been completed and the Petitioner hopes to open by the end of June, 1997. Due to the proposed addition of an arcade to the restaurant use, a special exception is necessary. In addition, the requested variances are necessary to legitimize existing conditions on the property, due to the recent improvements.

Further testimony revealed that the Petitioner has submitted a landscape plan to Baltimore County, which has been reviewed and approved by the County's Landscape Architect. A copy of said plan shows that extensive landscaping is proposed for the site.

It is clear that the B.C.Z.R. permits the use proposed in a B.R. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. In fact, no one appeared in opposition to the request, and there were no adverse comments submitted by any Baltimore County reviewing agency. Thus, the facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone.

reate congestion in or general welfare of the locality, nor tend to roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- whether a grant of the variance would do a sub-2) stantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- whether relief can be granted in such fashion 3) that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, I am persuaded to grant the variances. As noted above, the same side/rear setbacks of the original building will be maintained, and while the Petitioner cannot meet parking requirements for the proposed improvements, it is apparent that parking has never been a problem at this site as evidenced earlier, the Petitioner has acquired additional land to the rear of his property and is able to provide 45 more parking spaces than in the past. In my view, that strict compliance with the zoning regulations would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the special exception and variances should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13 day of June, 1997 that the Petition for Special Exception to permit an arcade and restaurant on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: From Section 238.2 to permit a side and rear setback of 3.1' in lieu of the required 30 feet each, and from Section 409.6.A.2 to permit 159 parking spaces in lieu of the required 238 spaces for a proposed restaurant expansion, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
- Landscaping for the subject property shall be completed within six (6) months of the date of this

compliance on the landscape Plan approx Landscape Architect for Baltimore County.

When applying for any permits, the site plan and 3) landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

Pm. 209 Avan

# Defitiones PROFESSION (S) SIGN-IN SHEET

NAME	ADDRESS
	720 8 MONTED AND
John W. Navick	1916 North Point Rd Polk Me 11449 PULAGRE HOY
TERRY THURSTON	11449 PULAGRE Hoy
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